

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HORACE ALEXANDER,
TDCJ-CID NO.1486540,
Plaintiff,
v.

NATHANIEL QUARTERMAN,
Defendant.

}
}
}
}
}
}
}

CIVIL ACTION H-09-0979

OPINION ON DISMISSAL

Plaintiff, a state inmate, has filed a civil rights complaint (Docket Entry No.1) and an amended complaint (Docket Entry No.3), in which he alleges that he is not being treated for high blood pressure and gastrointestinal problems, although he is being treated for diabetes and other ailments. Plaintiff seeks \$10,000,000.00 and immediate release. (Docket Entry No.3).

Plaintiff has not filed an application to proceed *in forma pauperis*, but given his litigation history, the Court presumes that he intends to proceed *in forma pauperis*. A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Plaintiff claims that he is in immediate danger because he is subject to stroke, heart attack, or kidney failure due to his chronic ailments as high blood pressure and diabetes. Plaintiff indicates that he is now receiving medication for the diabetes but not for his high blood

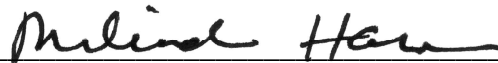
pressure. Plaintiff's attachments reflect that medical personnel have prescribed numerous medications to treat plaintiff's medical conditions but perhaps not the medication that plaintiff desires. Plaintiff states no facts to indicate that he is in imminent danger of serious physical harm by the failure of medical personnel to prescribe the medication that he presently seeks. *See Choyce v. Dominguez*, 160 F.3d 1068, 1071 (5th Cir. 1998) (requiring court to assess whether plaintiff was exposed to imminent danger of serious injury at time he filed his motion to proceed as a pauper).

Plaintiff's litigation history reveals that he falls within the provisions of section 1915(g). Plaintiff has filed at least three other lawsuits in federal courts while incarcerated in prison or a detention facility. All three have been dismissed as either frivolous, malicious, or for failure to state a claim upon which relief may be granted.¹

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g). Any pending motions are further DENIED.

The Clerk will provide a copy of this order to the parties. The Clerk will also provide a copy of this Order District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-strikes List.

SIGNED at Houston, Texas, this 16th day of April, 2009.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

¹ See *Alexander v. 19th Judicial District Court*, 3:03cv794 (M.D. La. Dec. 2, 2003) (frivolous); *Alexander v. Biaimonte*, 3:00cv915 (M.D. La. Mar. 13, 2001) (frivolous); *Alexander v. Troyer*, 2:95cv1126 (E.D. La. July 31, 1995) (frivolous). See also *Alexander v. Dr. Minino*, 4:06cv3630 (S.D. Tex. Nov. 21, 2006) (enumerating cases that have been dismissed as frivolous).